

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KENNETH RAY BUHL, JR.,

Defendant-Appellant.

---

UNPUBLISHED

June 24, 2003

No. 238752

Oakland Circuit Court

LC No. 99-168891-FC

Before: Sawyer, P.J., and Meter and Schuette, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of kidnapping, MCL 750.349, aggravated stalking, MCL 750.411i, and felonious assault, MCL 750.82. He was sentenced to concurrent terms of 65 to 240 months on the kidnapping conviction, one to five years on the stalking conviction, and one to four years on the assault conviction. He appeals his sentence as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E)(1)(b).

**I. FACTS**

Defendant and the victim were involved in a relationship that lasted approximately four months. After the relationship terminated, defendant was charged with domestic violence against the victim and a “no-contact order” was issued against defendant, however he proceeded to contact the victim. The incident in question occurred on July 26, 1999 when defendant confronted the victim with a knife outside of the victim’s place of employment. Defendant cut the victim on the stomach. Defendant gagged the victim, took her keys and kept her in the van for approximately one hour. When she agreed not to contact the police, defendant returned the victim to work. Upon release, the police were notified and the victim was taken to the hospital for treatment of the cut, which was minor. At trial, the defendant was found guilty. The defendant appeals the scoring of his offense and the prosecutor appeals the sentencing for the kidnapping count because the sentence falls below the guidelines.

**II. STANDARDS OF REVIEW**

“A sentencing court has discretion in determining the number of points to be scored provided that evidence of record adequately supports a particular score.” *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002). A scoring decision “for which there is any evidence in support will be upheld.” *People v Elliott*, 215 Mich App 259, 260; 544 NW2d 748 (1996).

The sentencing guideline statute mandates that this Court remand a matter for resentencing if “the trial court did not have a substantial and compelling reason for departing from the appropriate sentence range.” MCL 769.34(11);MSA 28.1097(3.4)(11). The Court should review a trial court’s conclusion that a factor giving reason to depart from the guidelines does or does not exist for clear error. *People v. Babcock*, 244 Mich App 64, 71-72 (2000)

### III. ANALYSIS

Defendant’s sole argument on appeal is that the trial court incorrectly scored offense variable (OV) 3. OV 3 states that when physical injury to the victim occurs, the offense should be scored by determining the gravity of the injury and assigning the highest number of points. MCL 777.33(1). Defendant was assessed ten points, indicating that the victim suffered bodily injury requiring medical treatment. MCL 777.33(1)(d). The evidence showed that defendant assaulted the victim with a knife. She was not severely wounded, but did suffer a cut which bled. After the incident, she was treated at a local hospital and released. Such evidence supported the court’s scoring decision.

Even if the court had erred in scoring OV 3, resentencing is not required. Assuming the medical treatment provided to the victim was not strictly necessary, it is beyond dispute that the victim did suffer bodily injury, albeit slight, and a score of five points would have been proper. MCL 777.33(1)(e). Reducing defendant’s OV score of 85 by five points would not change his OV level, MCL 777.62, and the guidelines range would be unchanged. Defendant’s minimum sentence was within the appropriate guidelines range either way and any error was harmless, *People v Ratkov (After Remand)*, 201 Mich App 123, 127; 505 NW2d 886 (1993), remanded 447 Mich 984 (1994). His sentence must be affirmed. MCL 769.34(10).

Affirmed.

/s/ David H. Sawyer  
/s/ Patrick M. Meter  
/s/ Bill Schuette